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ALEXANDER L. STEVAS,
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In The

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1762

RONALD F. MANALE, *Petitioner,*

— *vs.* —

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

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REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

REPLY ARGUMENT

1. The Brief for the United States in opposition to Ronald Manale's petition for certiorari was filed five (5) days late and thus should not have been accepted. On May 20th, 1981, the Clerk of the Supreme Court of the United States granted the Government's request for an extension of time within which to file a response to the petition, to and including June 12, 1981. (Appendix A). The Government, contrary to the Clerk's extension, filed their Brief in Opposition on June 17, 1981. (Appendix B). Pursuant to Rule 22 of this Court; "[r]espondent shall have 30 days (unless enlarged . . . by the Clerk pursuant to Rule 29.4) after receipt of a petition, within which to file . . .

an opposing brief." (Rule 22, Rules of the Supreme Court of the United States). The rule also states that "the clerk shall not accept a brief which does not comply with this Rule" (Rule 22, Rules of the Supreme Court of the United States). The Clerk, therefore, filed the Government's brief in opposition contrary to the Rules of the Supreme Court, and said brief should not have been accepted.

2. Assuming, arguendo, the facts in respondent's brief in opposition (Brief 3) there is still no evidence of any agreement. The facts in respondent's brief at the most show that petitioner contemplated a purchase, but the fact remains that petitioner never did purchase any cocaine from Wedbush. The Government themselves concede that petitioner informed Wedbush that "he could not distribute the cocaine" (Brief 3).

The Government also contends that petitioner and Wedbush agreed to continue discussing a possible cocaine transaction after she (Wedbush) returned from Detroit (Brief 2-3). This is not so. Wedbush said they could discuss Pat Malek after she (Wedbush) returned from Detroit and petitioner said okay (8-7-79 T. p. 94-95).

A reading of the trial transcript supports petitioner's contention that the evidence was wholly insufficient to warrant his conviction. The Government's chief witness against petitioner was Christine Wedbush, an informant in the Witness Program who was paid $880.00 a month along with medical expenses while living at home with her mother. Wedbush's testimony instead of supporting petitioner's conviction, actually supports his innocence. Wedbush testified that petitioner did not know anything about her plans for Detroit, other than knowing that she was going there (8-6-79 T. p. 595, A-958). Petitioner had no knowledge of any deal with Wedbush, nor did he indicate at any time that he was going to join in any plan or organization for the marketing of cocaine. Mr. Manale, petitioner, did not wish to purchase the cocaine and wanted nothing to do with Wedbush's efforts to sell him the substance

(8-6-79 T. p. 552, 558, 582, A-915, 921, 945). Wedbush also testified that petitioner "did ask us to leave because he couldn't get rid of it for us" (8-6-79 T. p. 582, A-945). In fact, Wedbush stated at trial that she felt it was partly her fault that petitioner was involved (8-6-79 T. p. 582, A-945), and admitted that she had "no agreement" with him concerning anything with regard to cocaine (8-6-79 T. p. 599, A-962). The next day at trial, during the Government's re-direct examination of Wedbush, and after an extensive opportunity to refresh her memory, Wedbush testified that there was "no written agreement between her and Mr. Manale" (8-7-79 T. p. 94, A-1069), and failed to elaborate on that point.

The respondent also makes note of the fact that petitioner drove Wedbush to the airport (Brief 3) and implies an agreement to conspire with intent to distribute can be found out of that fact. This is certainly a tenuous position at best and such an inference is clearly beyond the standard of any rational trier of fact. I doubt that this Court wants to hold that absent any agreement between alleged conspirators, an agreement to conspire to distribute can be found where a person drives an old friend to the airport and that person has contraband in her possession. A holding such as the above would be too tenuous a standard and would lead to rampant mistrust and suspicion among family and friends.

3. Petitioner concedes that there is a presumption in favor of joint trials (Brief 5), but only when joinder can be achieved without substantial prejudice to the rights of a defendant to a fair trial (*Bruton* v. *U.S.*, 391 U.S. 123 (1968). In denying petitioner's motion for severance, the District Court was in effect stating that joinder would not prejudice his rights to a fair trial. A delay of 283 days certainly did prejudice petitioner's rights to a fair trial and moreover through joinder the jury was forced to hear evidence concerning the culpability of nine defendants. This led to the impossible task of the jury trying to distinguish petitioner's alleged culpability from that of his co-defendants. Thus, joinder did prejudice petitioner's rights to a fair trial.

4. The petitioner does not contend that the reason for the delay was a deliberate attempt to delay the trial in order to hamper the defense, but delay did in fact abridge petitioner's right to a Speedy trial and as the delay was not justifiable, it should be weighed against the Government since they have the ultimate responsibility for such circumstances. *Barker* v. *Wingo*, 407 U.S. 514 (1971).

CONCLUSION

This Court should grant certiorari, and the judgment below should be reversed.

Respectfully submitted,

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I certify that 3 copies of this Reply were served upon the following by placing the same in the United States mail on July 8, 1981, prior to filing in the Clerk's office of this Court.

Solicitor General
Room 5614 Department of Justice
Washington, D.C. 20530

CARL F. GUY, ESQ.
Counsel for Petitioner

FRANK ARMANI, ESQ.
Counsel of Record

APPENDIX A – Clerk's Grant of Extension of Time Within Which to File Opposing Brief.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

May 20, 1981

Honorable Wade H. McCree, Jr.
Solicitor General
U.S. Department of Justice
Washington, D.C. 20530

Re: Ronald F. Manale v. United States
No. 80-1762

Dear Mr. McCree:

Your request of May 19, 1981 for an extension of time within which to file a response opposing the petition for a writ of certiorari in the above-entitled case has been granted, and your time has been extended to and including June 12, 1981.

Very truly yours,
ALEXANDER L. STEVAS, Clerk
By

Francis J. Lorson
Chief Deputy Clerk

sd

cc: Carl F. Guy, Esquire
Frank Armani, Esquire

APPENDIX B – Letter of Service.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19 80

RONALD F. MANALE, PETITIONER)
)
vs.) No. 80-1762
)
UNITED STATES OF AMERICA)

Service of THREE copies of BRIEF FOR THE UNITED STATES IN OPPOSITION, is acknowledged this 23rd day of JUNE, 19 81.

s/ Frank Armani (illegible)
CARL F. GUY

FRANK ARMANI
s/ Carl F. Guy

AIR MAIL:JUNE 17, 1981
Note: Please date, sign and
return this acknowledgment to:
OFFICE OF THE SOLICITOR GENERAL
Department of Justice
Washington, D. C. 20530